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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFREDERICK LOVE,

Defendant and Appellant.

D043053

(Super. Ct. No. CF10728)

APPEAL from a judgment of the Superior Court of Imperial County, Jeffrey B. Jones, Judge. Affirmed.

A jury convicted Alfrederick Love of one count of violating Penal Code section 4501.5,¹ and found true he had suffered three prior serious or violent felony convictions (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subd. (c)). Love argues the trial court

¹ All statutory references are to the Penal Code.

erroneously denied his *Wheeler*² motion contesting the prosecution's excusal of a prospective juror by peremptory challenge.

I

BACKGROUND

After the jury was selected but before it was sworn, defense counsel asserted a *Wheeler* objection to the prosecution's excusal by peremptory challenge of Ms. M., the only African-American remaining in the jury pool after hardship excusals were accepted. The prosecution, responding to the trial court's invitation to state reasons for the challenge to Ms. M., explained she was a "social worker" or "eligibility worker" and both prospective jurors who stated they were employed as social workers had been peremptorily challenged.³ The prosecution explained the personal jury selection standards were to exclude social workers because "[t]hey are not favorable jurors to the prosecution," and that was the reason for the challenge to Ms. M.⁴

The trial court denied Love's *Wheeler* motion. It concluded the dismissal of a single African-American juror did not prima facie show improper racial discrimination in

² *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*).

³ Mr. R., another prospective juror who stated he worked at the social security office, was also dismissed by the prosecution's use of a peremptory challenge.

⁴ The prosecution stated, "I would offer as my reason . . . that she's a social worker and eligibility worker. I excused both of those that I believed to be that. That is a personal--my personal jury selection. Teachers and social workers don't sit on the jury. I referred to [the predecessor prosecutor's] notes who was in original voir dire. It appears she was an eligibility worker. They are not favorable jurors to the prosecution."

the selection of the jury. It also concluded the prosecution's race-neutral explanation provided a reasonable, nondiscriminatory basis for the peremptory challenge.

II

ANALYSIS

A. Legal Standards

"It is well settled that the use of peremptory challenges to remove prospective jurors solely on the basis of a presumed group bias based on membership in a racial group violates both the state and federal Constitutions." (*People v. Turner* (1994) 8 Cal.4th 137, 164, disapproved on other grounds in *People v. Griffin* (2004) 33 Cal.4th 536, 555, fn. 5.) In *People v. Williams* (2000) 78 Cal.App.4th 1118, the court summarized *Wheeler* and procedures for deciding *Wheeler* motions:

"*Wheeler* prohibits the use of peremptory challenges to exclude all or most members of an identifiable group of citizens on racial, religious, ethnic, or other similar grounds, solely because of a presumed 'group bias.' [Citations.] There is a rebuttable presumption that a peremptory challenge has been made on a constitutionally permissible ground. [Citation.] To overcome the presumption, the party making a *Wheeler* motion carries the initial burden to establish a prima facie case of group bias. [Citation.] To establish a prima facie case, the moving party is required not only to show that the persons excluded were members of a cognizable group; he must also show, from all the circumstances of the case, a strong likelihood that such persons were being challenged because of their group association. [Citation.]" (*Williams, supra*, at pp. 1124-1125.)

If a moving party establishes a prima facie case the juror was excluded based on his or her association with a cognizable group, "the burden shifts to the challenged party to provide a race-neutral explanation for the exercise of [the] peremptory [challenge].

[Citation .]" (*People v. Ayala* (2000) 24 Cal.4th 243, 260.) If the challenged party offers race-neutral reasons, the trial court must then decide whether the stated reasons are untrue and pretextual. (*Id.* at p. 261; *People v. Alvarez* (1996) 14 Cal.4th 155, 196.)

In reviewing a trial court's determination whether the prosecution's neutral explanations are genuine and not a pretext for racial or other group discrimination, an appellate court applies the substantial evidence standard of review (*People v. Williams* (1997) 16 Cal.4th 635, 666; *People v. Alvarez, supra*, 14 Cal.4th at pp. 196-198), and a trial court's determination regarding the sufficiency or genuineness of the prosecution's stated race-neutral reason is entitled to "great deference." (*Williams*, at p. 666; *People v. Fuentes* (1991) 54 Cal.3d 707, 720-721.) As explained in *People v. Montiel* (1993) 5 Cal.4th 877, 909: "If the trial court makes a 'sincere and reasoned effort' to evaluate the nondiscriminatory justifications offered, its conclusions are entitled to deference on appeal. In such circumstances, an appellate court will not reassess good faith by conducting its own comparative juror analysis. Such an approach would undermine the trial court's credibility determinations and would discount 'the variety of [subjective] factors and considerations,' 'including 'prospective jurors' body language or manner of answering questions,' which legitimately inform a trial lawyer's decision to exercise peremptory challenges. [Citations.]"

The prosecution's nondiscriminatory justification will suffice if it is genuine and neutral, even if trivial. (*People v. Arias* (1996) 13 Cal.4th 92, 136.) A hunch about a prospective juror or even an arbitrary exclusion may be sufficient if it shows the

prosecution exercised a peremptory challenge for reasons other than impermissible group bias. (*People v. Williams, supra*, 16 Cal.4th at p. 664.)

B. Analysis

During jury selection in this case, the prosecution exercised 11 peremptory challenges, one of which excused Ms. M., who apparently was the only African-American on the jury panel. Love objected to the prosecution's peremptory challenge of Ms. M., arguing that because she had some familial connections to law enforcement, the only possible basis for excusing her was improper group bias in violation of *Wheeler*. The prosecution, responding to the court's query, explained her excusal was because she was a social worker, and social workers "are not favorable jurors to the prosecution."

The trial court found (1) Love had not established a prima facie case of group bias and, alternatively, (2) the prosecution's stated basis was reasonable and established there was not a discriminatory motive for dismissing Ms. M. We conclude the trial court did not abuse its discretion on either aspect of its ruling.

The Prima Facie Ruling

The prima facie showing requires the objector to produce evidence showing it is more likely than not the peremptory challenge, if unexplained, was based on impermissible group bias. (*People v. Johnson* (2003) 30 Cal.4th 1302, 1318.) The standard is not satisfied merely because Ms. M. is African-American. (*People v. Farnam* (2002) 28 Cal.4th 107, 136-137; *People v. Box* (2000) 23 Cal.4th 1153, 1185 [where basis for claim two prospective jurors were challenged on racial grounds was that both

were Black, the claim was insufficient to establish prima facie case].) The only additional evidence cited by Love is his speculation Ms. M.'s familial connections to law enforcement should have made her a favorable prosecution juror. This too is insufficient to permit us to overturn the trial court's ruling. (*People v. Turner, supra*, 8 Cal.4th at p. 167 [claim that all challenged jurors were Black and stated they could be impartial or in fact favored the prosecution insufficient to establish prima facie case].)

Moreover, Love's argument implicitly requires us to reweigh the evidence considered by the trial court, in disregard of the "considerable deference" we must accord to trial court rulings on the prima facie showing element. (*People v. Johnson, supra*, 30 Cal.4th at p. 1325.) A ruling on the prima facie case involves a trial judge's personal observations of a juror's responses and demeanor. (*Ibid.*) Additionally, appellate deference is appropriate because, unlike the trial court, "[a] reviewing court does not see the big picture; it cannot place a case like this into perspective. It cannot know whether a case like this is typical, thus suggesting a real problem, or merely a statistical aberration of the type that will inevitably occur occasionally given such a small sampling. The trial court, however, is capable of seeing the big picture. It can place a specific trial in a county into perspective. Trial judges ' "are in a good position to make such determinations . . . on the basis of their knowledge of local conditions and of local prosecutors." ' [Quoting *Wheeler, supra*, 22 Cal.3d at p. 281.] This is another reason we must, and can, rely on trial courts to determine, from all the relevant circumstances, whether a prima facie case of discriminatory use of peremptory challenges exists."

(*Johnson*, at pp. 1326-1327.) On this record, we cannot conclude the trial court erred in finding no prima facie case of group bias was established.

Ruling on Genuineness of Stated Race-neutral Reason

Assuming Love's showing satisfied his prima facie obligation, there is substantial evidence to support the trial court's finding the prosecution's peremptory challenge of Ms. M. was not based on an improper group bias. (*People v. Williams*, *supra*, 16 Cal.4th at p. 666.) The prosecution stated a race-neutral reason for challenging Ms. M.: her occupation as a social worker suggested she might be an "[un]favorable [juror] to the prosecution." Our evaluation begins with the presumption the party exercising the peremptory challenge did so on a constitutional basis (*Wheeler*, *supra*, 22 Cal.3d at p. 278), and the recognition peremptory challenges for occupational reasons can provide a legitimate race-neutral reason for excusing a prospective juror. (*People v. Barber* (1988) 200 Cal.App.3d 378, 394 ["Peremptory challenges are often exercised against teachers by prosecutors on the belief they are deemed to be rather liberal"].) "If a prosecutor can lawfully peremptorily excuse a potential juror based on a hunch or suspicion, or because he [or she] does not like the potential juror's hairstyle, or . . . observed the potential juror glare at [the prosecutor], or smile at the defendant or defense counsel, then surely he [or she] can challenge a potential juror whose occupation, in the prosecutor's subjective estimation, would not render him or her the best type of juror to sit on the case for which the jury is being selected." (*People v. Reynoso* (2003) 31 Cal.4th 903, 924-925, fn. omitted.) The proper focus of the trial court's inquiry is on the

subjective *genuineness* of the race-neutral reasons given for the peremptory challenge. Our review is limited to determining whether the trial court's conclusion--that the prosecution's subjective race-neutral reasons for exercising the peremptory challenges were sincere--is supported by the record when considered under the applicable deferential standard of review. (*Id.* at p. 924.)

Love argues we should reject the trial court's conclusion the prosecution's stated reason was sincere, and instead find it was a pretext for a racially motivated challenge, because the prosecution viewed teachers to be unfavorable jurors but nevertheless left a teacher (as well as a teacher's aid and an instructional assistant) on the final jury. However, the trial court's conclusion the prosecution's stated reason was genuine is supported by the fact the prosecution also peremptorily challenged the only other juror whose occupation was connected to social work. Moreover, the fact the prosecution left three persons connected with *teaching* on the jury does not detract from the conclusion the prosecution had a genuine antipathy towards *social workers*.⁵

⁵ We are cognizant a comparative juror analysis on appeal is unreliable and inconsistent with the deference we accord to trial courts in this area. (*People v. Johnson, supra*, 30 Cal.4th at p. 1318.) However, even were it appropriate to consider the fact the prosecution left three persons connected with teaching on the jury despite expressed concerns over their antipathy to the prosecution, that fact adds little to our analysis. The prosecution *did* peremptorily challenge one person (Ms. Velarde) connected with the teaching profession. The decision to retain the three teaching-connected jurors may well have been motivated by countervailing factors in their background that ameliorated concerns about their potential antipathy. For example, in contrast to the dismissed teacher, the retained teaching-connected jurors appear to have been older, thereby mitigating concerns over liberal outlooks. Additionally, two of the retained teachers were married to spouses whose occupations (a farmer and a cowboy) perhaps suggest a more conservative outlook.

The record contains an insufficient basis to conclude the trial court erroneously denied Love's *Wheeler* motion.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.